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No. 00-189

In the Supreme Court of the United States

STATE OF IDAHO, PETITIONER

v.

UNITED STATES OF AMERICA, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

The United States created the Coeur d'Alene Indian Reservation through an Executive Order that included a portion of the bed of Coeur d'Alene Lake and the St. Joe River as part of the Reservation. The district court found that, at the time of Idaho's admission to the Union, Congress clearly manifested its intent, through legislation and other actions, that the Reservation included submerged lands. The question presented is whether the court of appeals erred in affirming the district court's conclusion that Congress's actions established its intent, when Idaho was admitted to the Union, to defeat the State's title to those submerged lands.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1-30) is reported at 210 F.3d 1067. The opinion of the district court (Pet. App. 31-86) is reported at 95 F. Supp. 2d 1094.

JURISDICTION

The judgment of the court of appeals was entered on May 2, 2000. The petition for a writ of certiorari was filed on July 25, 2000. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

The United States brought this action to quiet title to submerged lands for the beneficial use of the Coeur d'Alene Indian Tribe. The disputed lands are located in

northern Idaho within the exterior boundaries of the Coeur d'Alene Indian Reservation and consist of approximately the southern third of Coeur d'Alene Lake and a portion of the St. Joe River. The United States District Court for the District of Idaho held that the United States owns those lands for the benefit of the Tribe, Pet. App. 31-86, and the court of appeals unanimously affirmed the district court's judgment, *id.* at 1-30.

1. Under the Property Clause of the United States Constitution, Congress has plenary power "to make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States." U.S. Const. Art. IV, § 3, Cl. 2. Congress's power extends to submerged lands beneath navigable waters, which have long been viewed as having special sovereign attributes. See *United States* v. *Alaska*, 521 U.S. 1, 33-34 (1997); *Utah Div. of State Lands* v. *United States*, 482 U.S. 193, 195 (1987). "As a general principle, the Federal Government holds such lands in trust for future States, to be granted to such States when they enter the Union and assume sovereignty on an 'equal footing' with the established States." *Montana* v. *United States*, 450 U.S. 544, 551 (1981). The United States may, however, deprive a future State of title to submerged lands by reserving those lands for an appropriate public purpose or by granting them to private parties. See *Alaska*, 521 U.S. at 33-34. Nevertheless, "disposals by the United States during the territorial period are not lightly to be inferred, and should not be regarded as intended unless the intention was definitely declared or otherwise made very plain." *United States* v. *Holt State Bank*, 270 U.S. 49, 55 (1926).

2. The district court made extensive findings respecting the lands at issue here. See Pet. App. 31-86.

As that court explained, the Coeur d'Alene Tribe once inhabited more than 3.5 million acres in northern Idaho and northeastern Washington, including the lands adjacent to Coeur d'Alene Lake and two associated waterways, the St. Joe River and the Spokane River. *Id.* at 32, 43. The Tribe depended on those water bodies for food, trade, travel, and cultural practices. *Id.* at 43-48. Tribal members ate trout and whitefish year-round, collected mussels and clams, traded dried fish, relied on the lake and associated rivers to facilitate hunting, gathered plants growing in the wetlands and marshes of these waterways, and used the watercourses as primary highways for travel, trade, and communication. *Id.* at 44. The lake and rivers were tied to the Tribe's "recreational pursuits, religious ceremonies and burial practices." *Id.* at 45. By the mid-1800s, through the influence of missionaries, the Tribe's members had begun to establish small garden plots, but they continued to depend on the lake and rivers for fish, waterfowl, and plants. *Id.* at 46, 49.

The arrival of non-Indian settlers in the region led to conflicts. See Pet. App. 49-50. On June 14, 1867, President Andrew Johnson issued an Executive Order establishing a reservation for the Tribe lying southwest of Coeur d'Alene Lake and including only a sliver of the lake. *Id.* at 32-33, 50. The Tribe initially was unaware of the federal government's unilateral action. When the Tribe learned that the United States had created a reservation, the Tribe expressed dissatisfaction with the boundaries and refused to accept it. *Id.* at 50. In 1871 and 1872, the Tribe sent petitions to the Commissioner of Indian Affairs describing certain areas that the Tribe considered essential for a reservation. In the 1872 petition, the Tribe made clear that it requested, in addition to 20 square miles identified in the 1871

petition, "two valleys, the S. Josephs (today called the St. Joe), from the junction of S. and N. forks, and the Coeur d'Alene from the Mission inclusively." *Id.* at 50-51. The Tribe explained that the valleys "have been from old the habitual residence of most of us" and that, although the Tribe was gaining experience at farming, "[w]e think it hard to leave at once old habits to embrace new ones: for a while yet we need have some hunting and fishing." *Id.* at 51. A government Indian agent noted, in his 1871 report, that the Tribe's members "subsist principally by hunting and fishing." *Id.* at 52. Similarly, a government official warned two years later that "there will in my opinion be trouble" if the Tribe were excluded from their traditional fisheries. *Ibid.*

In 1873, the Commissioner of Indian Affairs directed a commission to visit non-treaty Tribes in Idaho, including the Coeur d'Alene Tribe, to induce them "to abandon their roaming habits and consent to confine themselves within the limits of such reservation or reservations as may be designated for their occupancy." Pet. App. 33, 54. That year, the commission reached an agreement with the Coeur d'Alene Tribe that called for a reservation of approximately 598,000 acres and provided for compensation for the relinquishment of all claims to the remainder of the Tribe's aboriginal lands. *Id.* at 33. The reservation included, in addition to the area set aside by the 1867 Executive Order, an expanded upland area, the St. Joe and Coeur d'Alene Rivers, and all but a small portion of Coeur d'Alene Lake. *Id.* at 33-35, 55-56. The agreement also guaranteed "that the water[s] running into said reservation shall not be turned from their natural channel where they enter said reservation." *Id.* at 55. The agreement required congressional approval to become binding on

the parties. *Id.* at 33-34, 56. The Commissioner of Indian Affairs recommended that the President set apart the Reservation by Executive Order pending congressional action. *Id.* at 34, 57. On November 8, 1873, President Ulysses S. Grant established, by Executive Order, the Coeur d'Alene Indian Reservation with boundaries identical to those in the agreement. *Ibid.*

In 1883, the federal government surveyed the boundaries of the Reservation. Pet. App. 35, 57. The government instructed the surveyor to run the northern boundary across Coeur d'Alene Lake, excluding a portion of the lake's northern end from the Reservation. *Id.* at 57. Surveying a boundary across a navigable waterway "was contrary to the usual practice of meandering a survey line along the mean high water mark." *Ibid.* According to the survey, the Reservation encompassed a total area of 598,499.85 acres, "a calculation that included submerged lands under the Lake and rivers within the boundaries of the reservation." *Id.* at 57-58.

In 1885, the Tribe submitted a petition to the federal government requesting confirmation of the Reservation and payment for the lands not reserved to them. Pet. App. 68. In response, Congress authorized the Secretary of the Interior to negotiate with the Tribe "for the cession of their lands outside the limits of the present Coeur d'Alene reservation." *Id.* at 35, 68. As a result of those negotiations, the Tribe agreed in 1887 to cede its aboriginal lands "except the portion of land within the boundaries of their present reservation in the Territory of Idaho, known as the Coeur d'Alene Reservation." *Ibid.* The federal government promised, in exchange, that the Coeur d'Alene Reservation "shall be held forever as Indian land and as homes of the Coeur d'Alene Indians." *Id.* at 68-69. The 1887 agreement specified

that it was not binding on either party until ratified by Congress. *Id.* at 35, 69.

Meanwhile, the influx of non-Indians continued to encroach on tribal lands, including the associated waterways. Pet. App. 69. The government allowed steamboats to use Coeur d'Alene Lake, but the government treated the portions of the lake lying within the Reservation as Indian country and subjected the steamboats to the Trade and Intercourse Act, which prohibited introduction of liquor into Indian country. *Id.* at 69 & n.17. Non-Indians who were discovered making recreational use of the lake and rivers within the reservation boundaries were ejected as trespassers. *Id.* at 70. Consequently, pressure grew to make a portion of the lake and adjacent rivers available to non-Indian use. *Ibid.*

On January 25, 1888, the Senate passed a resolution observing that the Reservation is alleged to include "Lake Coeur d'Alene, all the navigable waters of Coeur d'Alene River, and about 20 miles of the navigable part of St. Joseph River, and part of St. Mary's, a navigable tributary of the Saint Joseph," except for about 3.5 miles of shoreline at the north end of the lake. Pet. App. 71. The resolution directed the Secretary of the Interior to "inform the Senate as to the extent of the present area and boundaries of the Coeur d'Alene Indian Reservation," including whether it included the navigable waters named in the resolution, and whether it would be advisable to release lands valuable for mineral entry as well as "any of the navigable waters aforesaid" from the limit of the reservation. *Id.* at 72.

On February 7, 1888, the Commissioner of Indian Affairs responded on behalf of the Secretary of the Interior, reporting to Congress that "the reservation appears to embrace all the navigable waters of Lake

Coeur d'Alene, except a very small fragment cut off by the north boundary of the reservation which runs 'in a direct line' from the Coeur d'Alene Mission to the head of Spokane River." Pet. App. 72. The Commissioner recommended "that changes could be made in the boundaries for the release of some or all of the navigable waters" of the Reservation without detriment to the Indians. *Id.* at 73. The Commissioner anticipated that, if the 1887 agreement with the Tribe was ratified, it would not be difficult to negotiate with the Tribe "for the cession of such portions of their reservation as they do not need, including all or a portion of the navigable waters, upon fair and very reasonable terms." *Ibid.* The Commissioner attached to the report a map of the Reservation as established by the 1873 Executive Order that showed the lake and rivers in relation to the reservation boundaries and described the reservation as including 598,499.85 acres, thus necessarily including the submerged lands. *Ibid.* Also in 1888, Congress enacted a statute provisionally granting the Idaho and Washington Railroad Company a right of way through the Coeur d'Alene Reservation that extended 75 feet into the lake and required the consent of and payment of compensation to the Tribe to make the right of way effective. Act of May 30, 1888, ch. 336, 25 Stat. 160. See Pet. App. 21 n.13.

During that same year, Congress debated whether to ratify the 1887 agreement, but postponed a final decision out of a desire "to acquire" an additional area of the Reservation. Pet. App. 74. The reservation lands of interest included, among other things, "a magnificent sheet of water, the Coeur d'Alene Lake and its chief tributary, to wit, the Coeur d'Alene River." *Ibid.* Congress accordingly initiated steps to obtain, by purchase, "the northern end of [the 1873] reservation." *Ibid.* On

March 2, 1889, Congress passed the annual Indian Appropriations Act, which included a provision authorizing the Secretary of the Interior

> to negotiate with the Coeur d'Alene tribe of Indians for the purchase and release by said tribe of such portions of its reservation not agricultural and valuable chiefly for minerals and timber as such tribe shall consent to sell.

Ibid. (quoting Act of Mar. 2, 1889, ch. 412, 25 Stat. 1002).

In negotiations conducted pursuant to this congressional authorization, the government's chief spokesperson, General Simpson, initially told tribal leader Chief Seltice that "the Lake belongs to you as well as to the whites—to all, every one who wants to travel on it." Pet. App. 75. Chief Seltice objected to "[General Simpson's] idea about the boundary." *Ibid.* General Simpson then suggested a revised boundary line that ran east from the Idaho-Washington territorial boundary to the western shore of the lake, ran south along the lake to a point about two-thirds from the northern end of the lake, and then cut directly east across the lake. *Ibid.* General Simpson explained that the government would purchase the northern end of the 1873 Reservation and leave the Tribe the "St. Joseph River and the lower part of the lake and all the meadow and agricultural land along the St. Joseph River." *Ibid.* That understanding became the basis for a final agreement that was signed on September 9, 1889. *Id.* at 75-76. The Secretary of the Interior reported to the House of Representatives that, under the 1889 agreement, the Tribe would sell lands that "embrac[ed] by far the greater portion of the navigable waters of the reservation." *Id.* at 76.

In March 1890, the House Committee on Indian Affairs reported a bill (H.R. 7703, 51st Cong., 1st Sess.) to approve the agreements with the Coeur d'Alene Tribe, see 21 Cong. Rec. 2775 (1890); H.R. Rep. No. 1109, 51st Cong., 1st Sess., and a parallel bill (S. 2828, 51st Cong., 1st Sess.) passed the Senate on June 7, 1890, see 21 Cong. Rec. 5769-5770 (1890). Shortly thereafter, on July 3, 1890, Congress admitted Idaho to the Union. Pet. App. 76; Act of July 3, 1890, ch. 656, 26 Stat. 215. The Idaho Statehood Act admitted Idaho "on an equal footing with the original States." *Ibid.* In the Statehood Act, Congress "accepted, ratified, and confirmed" the constitution of Idaho, which had been approved by Idaho voters in November 1889. *Ibid.* The constitution contained a clause that specifically renounced the State's "right and title to the unappropriated public lands" and lands "owned or held by any Indians or Indian tribes," and it recognized that "said Indian lands shall remain under the absolute jurisdiction and control of the congress of the United States." Pet. App. 76-77, 82. Later in that same Session, Congress ratified the 1887 and 1889 agreements with the Coeur d'Alene Tribe. *Id.* at 77; see Act of Mar. 3, 1891, ch. 543, 26 Stat. 989, 1027-1032.[1]

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[1] Congress later approved the removal from the Tribe's Reservation of two additional areas containing navigable waters. In 1894, Congress ratified the Harrison cession, which encompassed a one-mile strip of land that included a corner of Coeur d'Alene Lake. Pet. App. 26. In 1908, Congress withdrew a portion of the Reservation encompassing three smaller lakes and, in 1911, formally conveyed those lands by patent to the State. *Id.* at 27. Since that time, approximately 80% of the Reservation passed out of Indian ownership, and today the Tribe or tribal members own approximately 69,000 acres of the reservation. See *Idaho* v. *Coeur d'Alene Tribe*, 521 U.S. 261, 264 (1997).

3. The United States, acting in its sovereign capacity and as trustee for the Tribe, initiated this action against the State of Idaho seeking to quiet title to the submerged lands within the exterior boundaries of the Tribe's reservation for the benefit of the Tribe and its members. See *Idaho* v. *Coeur d'Alene Tribe*, 521 U.S. 261, 266 (1997).[2] In addition to its title claim, the United States sought a declaratory judgment to establish the Tribe's right to exclusive use, occupancy, and quiet enjoyment of the submerged lands. The United States also sought a permanent injunction prohibiting the State from asserting any right, title or other interest to such lands. Pet. App. 31-32. The Tribe intervened, asserting its interests based on alternative legal theories, which are not at issue in the petition for writ of certiorari. *Id.* at 32. The State of Idaho counterclaimed, requesting that title to the submerged lands be quieted in favor of Idaho. *Ibid.*

Based on the historic facts set out above, the district court concluded that the United States had "overcome the strong presumption of State ownership" and demonstrated that the United States retained the submerged lands for the benefit of the Tribe. Pet. App. 83. In summarizing its conclusions, the court explained that "the trial evidence demonstrates that the Federal Government clearly intended to include the submerged lands within the 1873 reservation." *Ibid.* The court also found that Congress was "on notice that submerged lands had been included in the 1873 reservation" and that Congress's direction to the Secretary of the

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[2] The Coeur d'Alene Tribe previously brought suit against Idaho seeking to quiet title to the whole of Coeur d'Alene Lake. See *Idaho*, 521 U.S. at 264-265. This Court concluded that the Eleventh Amendment barred the Tribe's claim. See *id.* at 281-288.

Interior to negotiate with the Tribe for the release of the submerged lands "reflected Congress's intent to ratify the inclusion of submerged lands within the reservation and to defeat the State's title to those lands." *Ibid.*

In light of those facts, the district court concluded that Congress's approval of the Idaho Statehood Act, including the disclaimer clause of the Idaho Constitution, "confirmed that the Federal Government retained title to the submerged lands for the benefit of the Tribe." Pet. App. 84. The court entered an order quieting title to the bed and banks of the Coeur d'Alene Lake and the St. Joe River lying within the current boundaries of the Coeur d'Alene Indian Reservation. *Id.* at 85-86. The district court permanently enjoined the State of Idaho from asserting any right, title or other interest in the submerged lands at issue. *Ibid.* The court did not address the Tribe's alternate legal theories. *Id.* at 84 n.27. The court also denied the State of Idaho's counterclaim. *Id.* at 86.[3]

4. Idaho appealed, and the court of appeals affirmed the district court's judgment. Pet. App. 1-30. The court of appeals explicitly applied the two-pronged test set forth by this Court in *United States* v. *Alaska*, *supra*, for determining whether the State was entitled to the submerged lands at issue. That court stated:

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[3] The district court denied Idaho's motion for stay and injunction pending appeal. See *United States* v. *Idaho*, No. CV 94- 328-N-EJL (D. Idaho Oct. 19, 1998). The court rejected the State's assertion that management of the lower part of the lake by the United States or the Tribe would adversely affect the State and the public interest. Rather, the court concluded that "the record reflects that currently the Tribe intends to honor all permits, licenses or uses issued or authorized by the State or its political subdivisions." Slip. op. 4.

"As framed by the Supreme Court, the question before us is 'whether the United States intended to include submerged lands within the [Reservation] and to defeat [Idaho's] title to those lands.'" Pet. App. 12 (quoting *Alaska*, 521 U.S. at 36). See also *id.* at 13-27.

Because Idaho conceded on appeal that the United States intended to include the submerged lands in the Reservation established by the 1873 Executive Order, the court focused on the second prong of the test. Pet. App. 13. Citing *Alaska*, the court stated that the second prong required an affirmative showing of congressional (rather than executive) intent to deprive Idaho of title to the lands in question and that such intention must be "definitely declared or otherwise made very plain." *Id.* at 12. In accordance with this Court's decision in *Alaska*, the court of appeals considered several factors that bore on Congress's understanding of the status of submerged lands within the Coeur d'Alene Reservation and on Congress's corresponding actions at the time of Idaho's admission to the Union. *Id.* at 15 & n.9.

First, the court of appeals recognized that the boundaries of the Reservation, as defined by both the 1873 Executive Order and the 1889 agreement, were drawn *across* the lake, with the 1889 agreement substantially curtailing the included acreage. Pet. App. 16. The practice of drawing the boundary across the lake, rather than along the shoreline, manifested the understanding that the submerged lands within the reservation boundary are part of the reservation. *Id.* at 16-17. The Tribe had insisted on including those submerged lands as part of the 1873 Reservation, and the government had redrawn the boundary in 1889 to "establish[] the Tribe's right to the Lake and rivers," a fact that was reflected in the maps submitted to Congress. *Id.* at

16. The court of appeals accordingly concluded that Congress was clearly on notice and must have understood that the 1873 Executive Order creating the Reservation and the 1889 agreement diminishing its size necessarily deprived a future State of title to submerged lands remaining within the Reservation. *Id.* at 17.

Second, the court of appeals observed that the United States had created the Coeur d'Alene Reservation to provide a means for tribal subsistence and that "the purpose of the reservation would have been defeated had it not included submerged lands." Pet. App. 17. The historical record showed that Congress had authorized the United States to negotiate a reservation for the Tribe, and the Tribe agreed to the 1873 Reservation, because the Tribe was dependent on the lake's fisheries. *Id.* at 18. The Tribe refused to settle on lands that did not include the lake and associated waterways. *Ibid.* Similarly, the court found that, when Congress directed the United States to renegotiate the Reservation boundaries, the United States reached agreement by ensuring that the Tribe retained beneficial ownership of the southern third of the lake and a portion of the St. Joe River. *Ibid.* In this case, as in *Alaska*, the fact that the United States had a distinct purpose for including submerged lands within the Reservation bears on the question of congressional intent, because Congress's retention of the submerged lands is necessary to fufill that purpose. See *ibid.*

Third, the court of appeals explained that Congress took a series of actions that "demonstrates acknowledgment, recognition, and acceptance of the boundaries of the 1873 reservation, which Congress knew the Executive had construed to include submerged lands, thereby showing the requisite intent to defeat state

title." Pet. App. 19-20. Congress's action in authorizing the 1889 negotiations to recover lands held by the Tribe manifested Congress's intent to honor the 1873 agreement and Executive Order. *Id.* at 21. "Although Congress had the opportunity and the power to repudiate the executive reservation and the 1887 agreement, it did not do so." Instead, Congress authorized negotiations "for the purchase *and release by said tribe* of such portions of *its reservation* . . . as such tribe *shall consent to sell.*" *Id.* at 22 (emphasis and ellipses supplied by the court) (quoting Act of Mar. 2, 1889, ch. 412, 25 Stat. 1002). The court concluded that Congress's affirmative act of directing open-ended negotiations to purchase whatever non-agricultural land, particularly submerged lands, the Tribe was willing to cede "presupposes that beneficial ownership of all land within the 1873 reservation, including submerged lands, had already passed to the Tribe." *Id.* at 23. Thus, the court concluded that Congress had "made very plain" its understanding and intent that the future State of Idaho would not have title to those reservation lands. *Ibid.* (quoting *Holt State Bank*, 270 U.S. at 555). Congress's ratification of Idaho's constitution, by which Idaho disclaimed lands "held by" Indian Tribes, provided further support for the court's conclusion. Finally, the court concluded that Congress's approval of Idaho's disclaimer, coupled with Congress's actions recognizing the Tribe's title to the submerged lands at issue here, established that Congress intended to defeat the State's title to those lands. *Id.* at 24-25.

ARGUMENT

The court of appeals correctly affirmed the district court's judgment that a portion of the bed of Coeur d'Alene Lake and the St. Joe River are part of the

Coeur d'Alene Indian Reservation. The lower courts properly identified and applied familiar legal principles that this Court recently reaffirmed in *United States* v. *Alaska*, 521 U.S. 1 (1997). This case does not involve any novel or undecided legal question, and it does not give rise to any conflict with any decision of this Court, another court of appeals, or the Idaho Supreme Court. Rather, the court of appeals' affirmance correctly resolved a fact-specific dispute over the application of settled law to a particular tract of land. The petition for a writ of certiorari accordingly should be denied.

1. As the court of appeals recognized, this Court has unequivocally established the legal principles that control this case. "In *Alaska*, the Supreme Court reaffirmed the two-prong test set forth in *Montana* and *Utah* for determining whether a state's presumptive equal footing title to submerged lands within its borders has been defeated." Pet. App. 12. The court of appeals properly examined "'whether the United States intended to include submerged lands within the [Reservation] and to defeat [Idaho's] title to those lands.'" *Ibid.* (quoting *Alaska*, 521 U.S. at 36). Idaho conceded below that "the 1873 executive order was intended to convey or reserve title to submerged lands." *Id.* at 13. Hence, the only issue before the court of appeals was whether "Congress's actions prior to statehood clearly indicate its acknowledgment, express recognition, and acceptance of the executive reservation, thereby establishing its intent to defeat the State's title." *Ibid.* The court of appeals concluded, based on a careful examination of the historical record, that Congress intended to deprive Idaho of title to a portion of the lake and river beds. *Id.* at 13-27.

Idaho argues that "the court of appeals' misapplication of the holdings in *Alaska* creates a series of con-

flicts that should be resolved through the granting of the petition for certiorari." Pet. 19. Idaho is mistaken. As a preliminary matter, Idaho is wrong in its view that this Court should review a court of appeals' supposed "misapplication" of settled law to the facts of a particular case. This Court does not grant review merely to examine the asserted "misapplication of a properly stated rule of law." Sup. Ct. R. 10. Furthermore, what Idaho describes as "conflicts" (Pet. 19) are merely Idaho's disagreements with the lower courts' factbound conclusions respecting the historical record in this case. At bottom, Idaho simply invites this Court to assume the court of appeals' role and engage in error review. There is no reason for the Court to do so. The unanimous court of appeals affirmed the district court's "lengthy and meticulous decision" (Pet. App. 2-3) on a fact-dependent issue that affects a single tract of land within a particular judicial district, and Idaho did not request rehearing or rehearing en banc on any issue in the case. Idaho's arguments in support of its petition are unpersuasive.

2. Idaho first contends (Pet. 14-16) that the decision of the court of appeals conflicts with decisions of the Idaho Supreme Court. This contention is without merit. None of the cases that Idaho cites addressed the question presented below: whether the United States, on behalf of the Tribe, retained submerged lands within the Coeur d'Alene Indian Reservation at the time it admitted Idaho to the Union—or, put another way, whether Congress intended to defeat the State's presumptive title to those lands. Indeed, none of those cases addressed any federal question at all, much less any question of ownership of the submerged lands within the Tribe's Reservation.

The cases that Idaho identifies involved the rights of private landowners near or adjacent to Coeur d'Alene Lake. Three of the four cases, by petitioner's own admission, addressed property or portions of the lake *outside* the boundaries of the Tribe's Reservation. See *Erickson* v. *State*, 970 P.2d 1 (Idaho 1998); *Kootenai Envt'l Alliance, Inc.* v. *Panhandle Yacht Club, Inc.*, 671 P.2d 1085 (Idaho 1983); *Bowman* v. *McGoldrick Lumber Co.*, 219 P. 1063 (Idaho 1923). The fourth case cited by petitioner, *West* v. *Smith*, 511 P.2d 1326 (Idaho 1973), did address the rights of an owner of property within the exterior boundaries of the Reservation. In that case, however, the Idaho Supreme Court specifically stated that the question of who held title was immaterial to its decision, see *id.* at 1330, 1331, and that it was not ruling on questions concerning rights associated with the lake bed, see *id.* at 1334.

Moreover, to the extent that those cases addressed the question of state ownership of the lake bed, they did so only in the context of determining whether individual riparian landowners had specified rights with respect to the lake by virtue of their riparian ownership or, in the case of *Kootenai Environmental Alliance*, the extent of the State's authority to grant a lease under the public trust doctrine.[4] The decisions did not

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[4] *Erickson* reviewed the trial court's determination of the lake's high water mark in order to determine whether title to certain lands could be quieted to owners of land adjacent to the lake. 970 P.2d at 2. *Kootenai Environmental Alliance* examined whether the public trust doctrine precluded the State from granting a lease to a private club for certain docking facilities. See 671 P.2d at 1087. *Bowman* examined whether the owner of property that did not extend to the high water mark of the lake had riparian rights to the lake. 219 P. at 1064. *West* addressed whether a houseboat moored to the lakebed could maintain a catwalk

consider the United States' or the Tribe's claims of title to the submerged lands themselves in the southern one-third of the lake. The state supreme court cases accordingly do not give rise to a conflict with the court of appeals' decision in this case.

3. Idaho next contends (Pet. 16-19) that the decision of the court of appeals "presents irreconcilable conflicts with decisions of this Court." The only decision of this Court that Idaho cites, however, is *Alaska*, and the court of appeals and the district court each explicitly—and correctly—applied that decision to resolve this case. See Pet. App. 11-12; *id.* at 37-38. Moreover, Idaho acknowledges that the "conflict" it posits would not "normally" provide "fertile ground for review on certiorari." Pet. 17. Idaho nevertheless urges this Court to depart from its normal practice because submerged lands disputes arise most frequently in the Ninth Circuit (*ibid.*) and because this Court's decision in *Alaska*, which arose out of the Court's original jurisdiction, was "not intended to provide national guidance or establish rules of general applicability" (Pet. 18). Idaho is wrong in both respects.

First, submerged lands disputes like the one involved here are not limited to the Ninth Circuit. Disputes over the federal government's pre-statehood reservation or conveyance of submerged lands may arise in any judicial district in which the federal government held lands in territorial status. See, *e.g.*, *Utah Div. of State Lands* v. *United States*, 482 U.S. 193 (1987) (certiorari to the Tenth Circuit in a case involving an executive designation of a reservoir site located in what is now the State of Utah); *Choctaw Nation* v. *Oklahoma*, 397

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attached to the shore, adjacent to the plaintiff's property, that interfered with the plaintiff's access to the lake. 511 P.2d at 1328.

U.S. 620 (1970) (certiorari to the Tenth Circuit in a case involving an Indian reservation created by treaty and patents and located in what is now the State of Oklahoma); *United States* v. *Holt State Bank*, 270 U.S. 49 (certiorari to the Eighth Circuit in a case involving an Indian reservation created by treaty and located in what is now the State of Minnesota).[5]

Second, there is no basis for Idaho's suggestion that cases brought under this Court's original jurisdiction—which have included landmark decisions ranging from *Marbury* v. *Madison*, 5 U.S. (1 Cranch.) 137 (1803), to *United States* v. *California*, 332 U.S. 19 (1947)—fail "to provide national guidance or establish rules of general applicability." Pet. 18. The Court's decisions in original actions have equal dignity with decisions rendered on certiorari or appeal. Indeed, the Court's decision in *Alaska* reaffirmed generally applicable legal principles that had previously been set out in *Utah*, *Montana*, and *Holt State Bank*, and that control this case. As we have noted, Idaho simply objects to what it views as "the court of appeals' misapplication" of those principles. Pet. 19. Idaho's objections are not only fact-based challenges respecting settled principles, but they are also mistaken on the merits.

a. Idaho contends that the court of appeals misapplied *Alaska* because that court did not require a showing that Congress "affirmatively intend[ed] to defeat state title." Pet. 19-22. Idaho is wrong. The court of appeals applied *Alaska*'s explicit test, which

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[5] Idaho also argues that disputes over submerged lands in "executive order" reservations occur most frequently in the Ninth Circuit. Pet. 17-18. But the Court's decisions in *Alaska*, *Utah*, and *Montana* do not suggest that a different legal standard would apply to those reservations. Hence, there is no reason to create a special certiorari rule for Executive Order reservations.

inquires "whether the United States intended to include submerged lands within the [reservation] and to defeat [the State's] title to those lands." Compare *Alaska*, 521 U.S. at 36, with Pet. App. 12 (the congressional action must manifest "an affirmative intent to defeat state title"). As the court of appeals correctly explained, "the test is whether Congress clearly intended to defeat the State's title to submerged lands." *Id.* at 21. The facts in this case, as found by the district court, satisfy that standard. See *id.* at 21-25. As the court of appeals explained, "Congress was heavily involved in deciding the fate of the submerged lands set aside for the Tribe's benefit by executive order. Congress treated the submerged lands as beneficially owned by the Tribe—to the point of authorizing negotiations for cession of whatever portion of the Tribe's submerged lands it was willing to sell." *Id.* at 24-25. Congress, through its various legislative actions, including its approval at statehood of Idaho's constitutional disclaimer of Indian lands, made its intentions "very plain." *Alaska*, 521 U.S. at 34 (quoting *Holt State Bank*, 270 U.S. at 55).[6]

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[6] Idaho suggests that Congress directed negotiations in 1889 aimed at purchasing submerged lands that the Tribe held under the 1873 Executive Order because it wanted "to secure the immediate release of at least some of the Lake from its status as 'Indian country'" before turning the whole lake over to the State in 1890. Pet. 21. That theory makes no sense. If Congress believed that the Tribe had no right to the lake bed, it would not have authorized negotiations aimed at *acquiring* whatever portion of those lands as the Tribe "shall consent to sell." Act of Mar. 2, 1889, ch. 412, 25 Stat. 1002. Indeed, Idaho's theory suggests that Congress was engaged in blatant trickery. Under Idaho's view, Congress purported to authorize negotiations for the purchase of those submerged lands that the Tribe would sell, but Congress intended to transfer to the State, without payment to the Tribe, whatever

b. Idaho next contends (Pet. 22-26) that the court of appeals misapplied this Court's teachings with respect to the relevance of the purpose of a reservation in determining congressional intent. Idaho is plainly mistaken. This Court's decisions recognize that "the *purpose* of a conveyance or reservation is a critical factor in determining federal intent." *Alaska*, 521 U.S. at 39. The Court specifically cited, as an example, its ruling in *Alaska Pacific Fisheries* v. *United States*, 248 U.S. 78, 87-89 (1918), that a "reservation of [a] 'body of lands' in southeastern Alaska for Metlakahtla Indians included adjacent waters and submerged lands, because fishing was necessary for Indians' subsistence." *Alaska*, 521 U.S. at 39. The court of appeals directly applied the *Alaska* decision to the facts presented by the Coeur d'Alene Reservation. See Pet. App. 14-15 (discussing the relevance of a reservation's purpose). The court of appeals noted that, "[a]s the district court found, and as the State does not challenge, the Tribe was dependent on its fisheries in 1873." *Id.* at 17. Furthermore, the Tribe's continued insistence on beneficial ownership of a portion of the lake and river in 1889 manifests the Tribe's continued reliance on those water resources and submerged lands at the time of Idaho's admission to the Union in 1890. See *id.* at 18, 73, 75. If Congress had believed that the Tribe no longer needed those resources at the time of Idaho's admission, Congress would have sought to acquire the

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lands the Tribe decided to retain. There is no basis for inferring that Congress had that intention. Rather, the historical record shows that Congress understood the 1873 Executive Order to have reserved most of the lake bed for the benefit of the Tribe and that the future State of Idaho would be entitled to only those portions that Congress reacquired through negotiations with the Tribe. See Pet. App. 21-23.

entire lake and river bed, rather than only "such portions of [the Tribe's] reservation not agricultural and valuable chiefly for minerals and timber *as such tribe shall consent to sell*." Act of Mar. 2, 1889, ch. 412, 25 Stat. 1002 (emphasis added). Cf. Pet. 25-26 (quoting the Act of March 2, 1889, but omitting the emphasized phrase).

c. Finally, Idaho contends that "[t]he court of appeals' decision ignores the fact that Congress purposefully deferred its ratification of the Reservation until after statehood." Pet. 26-29. Idaho's factbound challenge is both wrong and inconsequential. The court of appeals did address that issue. The court recognized that, following Idaho's admission—and Congress's ratification of Idaho's disclaimer of all lands "owned or held by any Indians or Indian tribes," Idaho Const. Art. XXI, § 19—Congress ratified both the 1887 and 1889 agreements. Pet. App. 8. The court of appeals properly accepted the obvious import of Congress's actions: Congress intended to admit Idaho to the Union while at the same time honoring the United States' agreements with the Coeur d'Alene Tribe. *Id.* at 23. Congress could do so only by retaining title to the submerged lands at issue here for the benefit of the Tribe. *Id.* at 81. If Congress had intended to deprive the Tribe of ownership of the residual portion of the lake bed—and deny the Tribe the benefit of the bargain the parties had made—Congress would have *refused* to honor those agreements or would have modified them to exclude the lake and river bed. Instead, Congress ratified the 1887 and 1889 agreements without any modification of the final reservation boundaries set out in the later agreement, and thereby confirmed what its pre-statehood actions made clear: The United States

retained a portion of the bed of Coeur d'Alene Lake and the St. Joe River for the benefit of the Tribe.[7]

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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[7] Indeed, as explained above (see p. 9, *supra*), by the time Congress passed the Idaho Statehood Act admitting Idaho to the Union in July 1890, the Senate had already passed a bill to ratify the 1887 and 1889 agreements with the Coeur d'Alene Tribe, and the House Committee on Indian Affairs had already reported a parallel bill to the House of Representatives. In doing so, there was no suggestion that passage of the Statehood Act would be in derogation of the agreements' retentions of the lake and river bed for the benefit of the Tribe. Congress thus obviously viewed its approval of the Statehood Act and of the agreements with the Tribe as consistent and complementary. The court of appeals therefore properly gave effect to the text of the 1889 agreement that preserved the southern portion of the lake and the relevant portion of the St. Joe River for the Tribe.